

REMARKS

1. Status of claims

After entry of the above amendment, claims 1-10, 12-33, and 35 are pending. According to the Examiner, claims 1-6 and 35 are withdrawn from consideration. Claims 34 and 36-40 have been canceled.

2. Support for amendment

The specification has been amended to clarify information given at p. 27, line 22 to p. 28, line 1, and to provide a detailed listing of yeast strains deposited according to the Budapest Treaty. Claims 21-23 have been amended to depend on claim 24. Claim 24 has been amended to include the terms abbreviated as LGDH and AGD. Applicants submit no new matter has been added by these amendments.

3. Claim rejections under 35 U.S.C. §112

The Examiner rejected claims 21-23 under 35 U.S.C. §112, second paragraph, as being indefinite, specifically, for lacking antecedent basis for the terms “the coding region encoding LGDH,” “the coding region encoding AGD,” and “the AGD enzyme.” By the above amendment, these claims now depend on claim 24, which provides antecedent basis for these terms. Therefore, Applicants request this rejection of claims 21-23 be withdrawn.

The Examiner also rejected claims 20 and 34 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement by containing new matter. By the above amendment, claim 34 has been canceled. Applicants traverse the rejection of claim 20.

The Examiner alleged that the specification does not mention an ALO, ARA, or RGLO enzyme isolated from *Arabidopsis thaliana*. At p. 13, lines 3-6, the specification states:

In one more preferred embodiment, the coding region of L-galactose dehydrogenase (LGDH), L-galactono-1,4-lactone dehydrogenase (AGD), D-arabinose dehydrogenase (ARA), D-arabinono-1,4-lactone oxidase (ALO), L-gulonono-1,4-lactone oxidase (RGLO) are isolated from *A. thaliana* or *S. cerevisiae* or *Rattus norvegicus*.

This passage clearly states that in one embodiment of the present invention an ALO, ARA, or RGLO enzyme is isolated from *Arabidopsis thaliana*. This embodiment was stated as of the time of filing the parent application and is not new matter. Therefore, Applicants submit the basis for this rejection has been removed.

The Examiner also rejected claim 10 under 35 U.S.C. §112, first paragraph, for lacking enablement. Specifically, the Examiner alleged the recombinant yeast strains recited therein did not appear to be obtainable by a repeatable method nor readily available to the public.

As stated in the specification at p. 28, lines 23-24, the recombinant yeast strains were in the process of being deposited under the Budapest Treaty as of the filing date of the parent application. Also deposited was non-recombinant yeast strain *S. cerevisiae* GRF18U. The above amendment to the specification lists the strains deposited, their place of deposit, and their compliance with the requirements of 37 CFR 1.801-1.809. Strains *S. cerevisiae* W3031B (ATCC 201238) and *Z. bailii* ATCC 60483 were publicly available as of the filing date of the priority application. *K. lactis* PM6-7A was known to the public from work published by Wesolowski et al., *Yeast* 8:711 (1992). Copies of the deposit receipts for the deposited strains and the ATCC catalog pages for the previously publicly available strains are attached for the Examiner's convenience. Therefore, Applicants submit the basis for this rejection of claim 10 has been removed and request the rejection be withdrawn.

4. *Claim rejections under obviousness-type double patenting*

The Examiner rejected claims 24-27 under obviousness-type double patenting as being unpatentable over claims 13-15 of US 6,630,330. Applicants herewith present a terminal disclaimer over US 6,630,330 and submit the basis for this rejection has been removed.

5. *Claim rejections under 35 U.S.C. §102*

The Examiner rejected claim 34 under 35 U.S.C. §102(b) as being anticipated by Roland et al., WO 85/0175 ("Roland"). By the above amendment, claim 34 has been canceled. Therefore, Applicants submit the basis for this rejection has been removed.

6. *Conclusion*

Applicants submit all pending claims are in condition for allowance. The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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